

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
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(240) 777-6600

**Case No. A-6520**

**PETITION OF MICHAEL LEE AND JANE C. PHILIPS**

OPINION OF THE BOARD  
(Hearing Date: May 24, 2017)  
(Effective Date of Opinion: June 9, 2017)

Case No. A-6520 is an application by Michael Lee and Jane C. Philips for a variance of five (5) feet to allow an existing attached shed to remain within three (3) feet of the side lot line. The required setback is eight (8) feet, in accordance with Section 59-4.4.7.C.3 of the Zoning Ordinance (Site Plan 819890340).

The Board of Appeals held a hearing on the application on May 24, 2017. Michael Lee Philips and his wife Jane C. Philips (the "Petitioners") appeared pro se in support of the petition. Qingsheng Yuan, whose rear property line abuts the side of the subject property, appeared pro se in opposition to the petition.

Decision of the Board: Requested Variance **Granted**.

**EVIDENCE PRESENTED**

1. The subject property is Lot 24, Block C, Piney Glen Village Subdivision located at 10200 Cross Haven Court, Rockville, Maryland, 20850, in the R-200/T Zone.
2. The Justification Statement states that the Petitioners purchased the subject property in 1995 from Toll Brothers Inc. Approximately ten years ago, the Petitioners had their patio contractor design and build an attached shed on the side of their home. The shed is constructed of solid brick over cinder block, and is designed "using brick and roofing that match the rest of the house and to make the development substantially conform to the rest of the neighborhood." It is eight (8) feet wide by twelve (12) feet long. The shed is used to store lawn and garden equipment. The Petitioners did not get a building permit from the County for this construction, and it is located in the side setback area. See Exhibits 3 and 5(c).

3. On April 7, 2017, the Petitioners received a letter from the County stating that their shed violated the setback requirements. See Exhibit 3.

4. The Petitioners' Justification Statement states that "[t]he topography of the site precludes construction in the rear of the house where the builder constructed a specially engineered French drain to move water away from the house and the back yard." It indicates that "[t]he side yards are narrow," that "[t]he shed is well screened by a large evergreen tree," and that "[t]he right front side of the house was the only logical location to place the shed." See Exhibit 3.

5. The Justification Statement states that "[t]he granting of this variance will not be adverse to the use or enjoyment of abutting or confronting properties," that the existing shed "does not create an eyesore or hazard to anyone in the neighborhood," and that the shed "does not stop or inhibit anyone from enjoying the use of their property...." See Exhibit 3.

6. The record contains letters of support from the Petitioners' abutting neighbors to the left and to the rear. See Exhibits 7(a) and 7(b). In addition to supporting the grant of the variance, the neighbors to the rear corroborate the Petitioners' representations about drainage issues in their rear yard, stating that "[w]ater drainage has been an issue from day 1. Our estimation is that the builder, Toll Brothers, did not grade the land properly. The swale line goes through our common backyards. During heavy rains, there is a river running through the backyard. There have been several attempts to correct the problem, we seem to remember that Toll Brothers did originally try to fix the problem to no avail, and I believe our neighbors also tried to fix it at their personal expense." See Exhibit 7(b).

7. At the hearing, Petitioner Michael Phillips testified that his property is unique. He testified that it has eight (8) sides, and that it is elongated and narrow. He testified that his property is located in the R-200 zone, but that it has just over 14,000 square feet. When asked by the Board how the size of his lot compares with neighboring properties, Mr. Phillips testified that most of the lots in his neighborhood are similarly sized, but that his lot is exceptionally narrow, stating that his property has an eight (8) foot side yard on one side, and an 11 foot (maximum) side yard on the other.

Mr. Phillips testified that his back yard is at a lower elevation than neighboring properties. He testified that water from the neighboring properties drains to his back yard, forming a pool of sorts, and that five or six times a year, there is a "river" running through his rear yard. The Zoning Vicinity Map verifies that the Petitioners' rear yard is the low point of the surrounding development, and that the elevations drop about 10 feet over the distance of one or two houses. See Exhibit 4. Mr. Phillips testified that while it would seem logical to locate a shed in his back yard, because of the elevation and topography of his property as compared with surrounding properties, and the resultant drainage/water problems in his back yard, that is not an option. He testified that the runoff from eight or nine houses flows to his yard, and that the builder had installed a French drain in his rear yard to try to address the problem. Mr. Phillips testified that he has had flooding damage in his home, and that he now has a sump pump. In response to testimony from Mr. Yuan

that the Petitioners have a patio in their rear yard, and thus could have located the shed there, Mr. Phillips testified that the patio was installed there so that they could walk on that area.

Mr. Phillips testified that the shed was constructed in the wider of his two side yards, and that it was made of brick over cinder block, with roofing to match his home. He testified that he has owned his property for 22 years, and that the shed was built in 2008. He testified that he uses it to hold garden tools and equipment. In response to Board questioning, he made clear that it is not used as a workshop. Mr. Phillips testified that there are no windows in the shed walls, but that the shed door, which is on the side of the shed that faces his rear yard, has a window.

7. Mr. Qingsheng Yuan, whose rear property line abuts the side lot line of the subject property, on the side of the house with the shed, testified in opposition to the variance. He testified that he purchased his home in 1997, and that the Petitioners' attached shed impacts his privacy. He testified that there is a line of trees on his side of the property line that he shares with the Petitioners, and that when he goes to work on these trees, he sees the brick wall that makes up the side of the shed. Mr. Yuan further testified that he believes that when he goes to sell his home, his property values will be affected by the presence of the shed.

Mr. Yuan testified that according to HOA records, the Petitioner's shed was constructed in 2015. Mr. Phillips disputed this, testifying that those records are incorrect and that the shed was built in 2008. In response to a Board question asking Mr. Yuan whether he was aware of the shed's construction at the time it was built, Mr. Yuan testified that he noticed the construction, but that at that time, he was unaware of the County Code provisions [presumably referring to the setback provisions]. He then stated that the Petitioners did not seek his approval when they received HOA approval for the shed.

## **FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59-7.3.2.E.2.a.i – exceptional narrowness, shallowness, shape, topographical conditions or other extraordinary conditions peculiar to a specific property*

The Board finds that the elevation and topography of the subject property relative to surrounding properties cause water to collect in and run through the rear yard of the subject property several times a year. The Board finds that this is an exceptional condition that limits construction to the rear of the existing home.

In addition, the Board finds, based on the testimony and representations of Mr. Phillips and the Site Plan, that the side yard space on both sides of the Petitioners' house is narrow and constrained. Indeed, the Board finds that per the Site Plan and Mr. Phillips' testimony, the side of the house with the attached shed is located at most 11 feet from that side lot line, and that the opposite side of the house is located exactly 8 feet from the side lot line. The Board notes that the narrow nature of the Petitioners' side yards relative to most of the surrounding properties is confirmed by the Zoning Vicinity Map. See Exhibits 3, 4 and 8.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds no evidence that the Petitioners created the topographical constraints in the rear yard, or the narrowness of the side yards.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the water issues caused by the rear yard's low elevation and the surrounding topography preclude construction of a shed to the rear of this home. The Board further finds that the unusually narrow side yards of this property, when compared to surrounding properties, do not afford the Petitioners adequate space to construct a usable shed in the side yard without a variance or variances. The Board notes that opting for an attached as opposed to a detached shed minimizes the number and extent of variances needed, and finds that the variance sought is the minimum necessary to allow the construction of a shed on this property.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that granting a variance for this attached shed, which is designed "using brick and roofing that match the rest of the house and to make the development substantially conform to the rest of the neighborhood," is consistent with the residential uses contemplated for the neighborhood and causes no impairment to the Potomac Subregion Master Plan (2002).

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds, per the Justification Statement, that the shed is well-screened from the street by a large evergreen tree. The Board notes that the Petitioners in this case have sought to minimize the impact of their shed addition by constructing it with the same brick and roofing that were used on the original house. The Board further notes that placing the shed in the side yard, rather than the front yard, minimizes its impact, and that the neighbor most affected has testified that he has a line of trees along the property line shared with the Petitioners. In addition, the Board finds that the record contains two letters of support, one from one of the Petitioners' next door neighbor, who states that the

structure has the same brick and roof as the house, and that "a passerby might think it was built with the original house," and the other from the neighbors who live directly behind the subject property, who state that the shed is "barely noticeable," and whose letter corroborates the water/drainage issues in the Petitioners' rear yard.

The Board notes that the Petitioners' abutting neighbor on the affected side, Mr. Yuan, testified at the hearing that he was concerned about his privacy and his property value. As a preliminary observation, the Board notes that the Petitioners and Mr. Yuan have been neighbors for approximately 20 years, and that this shed has been there for almost half of that time. Thus the Board finds it unusual that problems with this shed should surface at this late date. Nevertheless, Mr. Yuan has now raised these concerns, and while the Board is sympathetic, it is not persuaded that they merit denial of this variance. The Board notes that the Petitioners' shed has no windows except in the door, which does not face Mr. Yuan's property, and that its intended use is as storage space for garden equipment, not as living space. Thus the Board concludes that this shed will not impact Mr. Yuan's privacy any more than the Petitioners walking through their side yard would. The Board further notes that Mr. Yuan testified that there is a line of trees on his property along the shared property line, which should increase the privacy of his yard and mitigate his view of the shed. Finally, the Board finds that Mr. Yuan introduced no evidence to support his assertion that the shed would adversely impact his property value if and when he goes to sell his house.

In light of the foregoing, the Board finds that granting this variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance to allow an existing attached shed to remain in the side setback for this property is **granted**, subject to the following condition:

1. Petitioners shall be bound by their testimony and exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion.

Therefore, based upon the foregoing, on a motion by Edwin S. Rosado, seconded by Stanley B. Boyd, with John H. Pentecost, Vice Chair, and Bruce Goldensohn in agreement, and with Carolyn J. Shawaker, Chair, necessarily absent, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
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John H. Pentecost, Vice Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 9th day of June, 2017.

A handwritten signature in dark ink, appearing to read "Barbara Jay", is written over a horizontal line.

Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.